

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC005000000010528

Rustam Phiroze Mehta

... Complainants.

Versus

Marvel Dwellings Pvt. Ltd.
(Marvel Ribera A Building, Pune)

... Respondents.

MahaRERA Regn: -P52100002377

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: Mr. Ranjit Agashe Adv.

Respondents: Mr. Javed shaikh a/w

Mr. A.D.Pawar & Mr. Bhanushali Adv.


Final Order.

1st March 2018.

Whether the complainant who has paid the entire consideration amount in lump sum upfront choosing the option of getting interest instead of discounted price rate can be termed as investor? is the legal issue involved in this complaint filed under Section 18 of Real Estate (Regulation and Development) Act, 2016 (in short, RERA)

Pleadings of the parties.

2. The complainant contends that he sold his ancestral property situated at Pune in the year 2014. Since he is born and brought up in Pune, he wanted to have a residence at Pune. Therefore, he booked residential

 1

flat bearing no. 1001 in A- Building of respondents' registered project Marvel Ribera, Pune along with the user of two covered car parking and open terrace having carpet area of 119.10 sq. mtrs for Rs. 10,61,18,790/-. The respondents agreed to deliver its possession on or before 30th June 2016 with grace period of three months for the reasons beyond their control. The respondents failed to deliver the possession on the agreed date. The complainant further contends that since he paid the entire consideration amount upfront, the parties entered into Memorandum of Understanding on the day of agreement for sale itself (01.08.2014). The respondents agreed to pay the complainant Rs. 06,90,000/- per month as the interest for the period of 36 months from the date of execution of MOU dated 01.08.2014 and paid it till January 2017. Therefore, the complainant wants the refund of his amount with interest and compensation.

3. The respondents have pleaded not guilty. They have filed their reply to contend that the complainant is not an allottee but he is an investor to whom interest at the rate of Rs. 6,90,000/- per month was paid from 01.08.2014 till January 2017. It was also agreed by the complainant by executing MOU that the interest shall be payable for 36 months and if the construction would be completed and the flat would be given on leave and licence basis the amount of licence fee shall be adjusted. They further contended that the complaint is pre-matured and no cause of action has arisen to file the complaint as the respondents have revised the proposed date of completion as 30th June 2019. The respondents contend that they could not complete the project in time due to adverse market conditions and financial issues which were beyond their control. They deny their liability to refund the amount of stamp duty and registration charges as well as the taxes, as according to them, those amount have been paid to the Government. They request to dismiss the complaint.

4. Following points arise for determination and I record my findings thereon as under:



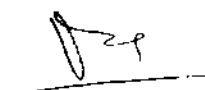
POINTS	FINDINGS
1. Whether the complainant is an allottee or investor?	Is allottee.
2. Whether the respondents have failed to deliver the possession of the flat on the agreed date of possession?	Affirmative
3. Whether the complainant is entitled to get refund of his amount with interest and/or compensation?	Yes, with interest from July 2016 onwards.

REASONS

Whether the complainant is an allottee or investor?

5. There is no dispute between the parties that the complainant paid the lump sum amount of consideration Rs. 10,61,00,790/- on 01.08.2014 and the agreement for sale had been executed by the Respondents in his favour on that day. It is also not in dispute that the parties also entered into MOU on the same date, whereby respondents agreed to pay the complainant Rs. 06,90,000/- per month from 01.08.2014 for a period of next 36 months. It is specifically mentioned in Para-3 of MOU that the interest shall be payable for 36 months irrespective whether the unit/flat is completed or not. Provided that if the unit would be completed and would be given on leave and licence basis before expiry of 36 months and the licence fee payable by the licensee exceeds Rs. 06,90,000/- then the interest would cease to be paid. On this background now it is necessary for me to decide whether the complainant is an allottee who agreed to purchase the flat or he intended to get return on his investment.

6. Learned Advocate Mr. Bhanushali of the respondents vehemently argues that the complainant is an investor, therefore this Authority has no jurisdiction to entertain his complaint. He relies upon the MOU dated



01.08.2014 by virtue of it the respondents agreed to pay the complainant Rs. 6,90,000/- per month for next 36 months irrespective of the completion of the unit. He has also pointed out Clause 48 of the agreement for sale, in which it is mentioned that 'the purchaser (complainant) informed the promoters (respondents) that purchaser is an investor and hence the purchaser reserves his right to claim stamp duty set off/ adjustment of stamp duty paid by the purchaser on these presents in terms of Article 5(g-a) (ii) of schedule I to The Bombay Stamp Act.'


7. I find that that the complainant in his Affidavit dated 6th February 2018 has clearly mentioned that he paid the full and final consideration of the flat in lump sum on 01.08.2014 when the agreement for sale was executed. In the agreement for sale the complainant has been described as a purchaser. The said document clearly mentions that the complainant agreed to purchase the flat no. 1001 with two covered car parking and terrace by making the full payment of its consideration. Its third schedule refers to the schedule of payment showing that the consideration was to be paid in 13 instalments depending upon the various stages of construction. After verifying these facts from record, I find that instead of making the payment as per third schedule, the complainant paid the entire consideration well in advance on the day of the agreement itself. The complainant mentions in his Affidavit that the respondents had two options. The first was 'interest option' and second was, 'discounted/reduced price option'. Respondents told him that if the flat would be given at discounted rate to the complainant then they would have to sell other units at the same price to the other purchasers also. Hence, on the suggestion of the respondents themselves he chose the option to get interest on his upfront payment of consideration and therefore, the MOU regarding payment of interest had been executed.

8. The complainant brings to my notice that the amount of interest agreed to be paid by the respondents was hardly at the rate of 6.899%,



whereas the Bank interest rate in those days was much higher. He also mentions in his Affidavit that he sold his ancestral property and in order to get the relief under section 54 of The Income Tax Act he was required to invest his money within the period of one year to avoid tax liability under capital gain. Therefore, he paid the consideration in lump sum to the respondents and got the tax relief which was permissible under law. It is also pointed out that had there been intention of investing the money only, he would not have entered into the agreement for sale and spent Rs. 74,63,315/- on stamp duty and registration charges as well as Rs. 39,68,874/- on account of service tax, Rs. 25,000/- for legal consultation charges and Rs. 5,000/- towards misc. expenses. I find that a person who has the intention of investing his money and to earn profit out of it would not spend such huge amount on these heads, he would have preferred to have the letter of the allotment only like other investors.

9. The complainant has clarified in his Affidavit that Clause-48 of agreement for sale on which the learned advocate of the respondents has relied upon is also a legal Clause which does not harm his interest. It has been brought to my notice that Schedule-I, Article - 5 (g - a),(ii) provides that 'if the document relates to the purchase of one or more units in any scheme or project by an investor from a developer, proper stamp duty would be as levied on conveyances under Clause (a),(b),(c) or (d), as the case may be of Article 25 on the market value of the unit. Its proviso provides that no conveyance of property by the investor under an agreement under this sub-clause to the subsequent purchaser, the duty chargeable for each unit under this clause shall be adjusted against the duty chargeable under Article 25(Conveyance) after keeping the balance of Rs. 100/-, if such transfer or assignment is made within the period of one year from the date of agreement. If an adjustment, no duty is required to be paid, then the minimum duty for conveyance shall be Rs. 1000/-. Therefore, it appears that the Clause-48 has been drafted on these lines.



The complainant has brought to my notice that the format of agreement used by the respondents is standard one and similar clauses appear in the other agreements also. In order to support his contention, he has produced the copy of the agreement executed by the respondents in favour of Mr. Khushboo Dastur and Mrs. Nawaj Dastur. I have verified this fact. The respondents have not mentioned the name of the complainant as investor/financer while registering their project. Therefore, they are estopped from denying the complainant's status as an allottee. Considering all these facts, I hold that the respondents have failed to prove that the complainant is the investor. After taking into consideration the definition of allottee defined by Section 2(d) of RERA, I find that complainant comes within the definition of 'allottee.'

10. Since the complainant comes within the definition of allottee, this Authority has jurisdiction to entertain his complaint.

Delayed Project.

11. The agreement for sale shows that the respondents agreed to deliver the possession of the complainant's flat on or before 30.06.2016 as per Clause-5(b), Clause-16 of the agreement shows that if the respondents for reasons beyond their control are unable to give possession of the said unit by the said date and for a period of three months, if those reasons still exist, then the allottee gets the right to claim his amount. So even after the lapse of grace period of three months, the respondents have not handed over the possession of the flat to the complainant. Hence I record my finding that respondents have failed to deliver possession of a flat on the agreed date.

Causes of delay.

12. The respondents have contended that they could not complete the project in time because of adverse market conditions and financial issues.



I do not find that these causes were sufficient to hold that respondents were entitled to get even the grace period of three months.

Legal Provision:

13. Section 18 of RERA provides that if promoter fails to complete or is unable to give possession of an apartment on the date specified in the agreement and the allottee withdraws from the project, then he is entitled to get refund of his amount with interest at prescribed rate from the date of its payment. Prescribed rate of interest is 2% above the State Bank of India's highest marginal cost of lending which is currently 8.05%.

Complainant's Entitlement.

14. The respondents have admitted the fact that they have received Rs. 10,61,18,790/- on 01.08.2014 from the complainant. The complainant is entitled to get it back as he withdraws from the project.

15. The complainant has produced the receipt of the registration charges showing that he paid Rs. 30,000/- towards registration charges and Rs. 1,280/- towards handling fee of documents on 01.08.2014. The complainant is entitled to get their reimbursement from the Respondents.

16. He has also paid Rs. 74,83,555/- on tax relating to this transaction. The complainant is entitled to recover them from the respondents as the respondents have made default in handing over the possession of the flat on the agreed date. The complainant is also entitled to get Rs. 40,000/- towards the cost of the complaint.

17. The complainant has produced e-receipt showing that he paid Rs. 63,67,200/- towards stamp duty for agreement for sale. This duty is paid in the name of the complainant himself. On cancellation of agreement for sale, the complainant is entitled to get its refund from the office of Sub-Registrar, Pune. Hence, he cannot claim this amount from the respondents.

18. The complainant is entitled to get the aforesaid amount with interest at the rate of 10.05% from respective dates of their receipts by the



respondents and by the date of payment to the Government also, as the case may be. The respondents have paid the complainant the interest from August 2014 to January 2017 amounting to Rs. 2,07,00,000/-. The respondents are entitled to get set off of this amount. Hence, the following order.

ORDER

1. Respondents shall pay the complainant the amount mentioned in para 14 to 16 of this order with simple interest @ 10.05% from the date of their receipt till their repayment.
2. The respondents are entitled to get set off, of Rs. 2,07,00,000/- against the amount due to the complainant.
3. The respondents shall pay the above mentioned amount within 30 days from this order as per Rule 19 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects and Real Estate Agents, Rates of Interest and Disclosure on Website) Rules, 2017.
4. The charge of the aforesaid amount shall be on the flat booked by the complainant till its repayment.
5. On satisfaction of his claim, the complainant shall execute the deed of cancellation of the agreement for sale, at respondents' cost.



(B.D. KAPADNIS)

Member & Adjudicating Officer,
MahaRERA, Mumbai.

Mumbai
Date: 1.3.2018